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# S. 824 — Aviation Investment and Revitalization Vision Act

Calendar No. 83

*Reported from the Committee on Commerce, Science and Transportation on May 2, 2003, by voice vote, with an amendment in the nature of a substitute. S. Rept. 108-41.*

## NOTEWORTHY

- S. 824 is likely to come before the Senate as early as Thursday June 12. At press time, it was unclear if a unanimous consent agreement would be reached to limit amendments.

- This Legislative Notice addresses the provisions contained in a managers' amendment, which is expected to be offered on the floor as a substitute, subject to further changes. Among its provisions, the substitute would retain the number of west-coast slots at Reagan National Airport to its current-law amount. H.R. 2115, which passed the House June 11, increased the number of slots available for flights beyond 1,250 miles from 12 to 24.

- The bill would extend through FY06 the Aviation Investment and Reform Act ("AIR-21," P.L. 106-181) spending provisions requiring appropriations from the Airport and Airway Trust Fund for FAA programs to be equal to receipts plus interest credited to the fund.

- The bill would provide $10.5 billion for the Airport Improvement Program (AIP) to improve airport capacity and safety. That amount is $300 million above the Administration's proposal, which called for a three-year, flat-line budget of $3.4 billion ($10.2 billion over the three years). S. 824 also provides $8.9 billion to upgrade the FAA's air traffic control system, the same as the President's request.

- In addition, the bill would create a new Aviation Security Capital Fund, financed with $500 million annually in security fees already being collected by the Transportation Security Agency (TSA). The Secretary of Homeland Security would administer the fund and make grants to airports to assist with capital security costs, most notably the installation of explosive detection systems (EDS).

## HIGHLIGHTS

- The bill authorizes funding for the FAA for FY04 through FY06. The major programs authorized are FAA operations; facilities and equipment (which funds FAA air traffic control modernization and replacement); the Airport Improvement Program (AIP); and research, engineering and development. The current law, the Aviation Investment and Reform Act ("AIR-21," P.L. 106-181), expires on September 30, 2003.

- If no action is taken, the AIP will expire on September 30, 2003, and airports will not receive their federal grants. The bill establishes contract authority for the program, and without this authority the FAA cannot distribute airport grants.

- The funding levels for FAA operations and for the facilities and equipment account are at the levels requested in the Administration proposal. The funding level for the AIP would be increased by $100 million per year in FY 2005 and in FY 2006, while the Administration proposal would keep the funding levels flat at the FY 2003 level of $3.4 billion.

- The bill would extend through FY 2006 the AIR-21 spending provisions requiring appropriations from the Airport and Airway Trust Fund for FAA programs to be equal to receipts plus interest credited to the fund. The bill also extends through FY06 the AIR-21 provision, giving priority and protections for funding from the trust fund for the FAA capital programs. Any funds above the taxes and interest that are required to fund the operations account are derived from the general fund. The AIR-21 funding "guarantees" that are enforced through points of order in the Senate and in the House of Representatives are also continued.

- The bill contains provisions designed to expedite the process for construction of airport capacity and safety projects. The bill would allow the Department of Transportation (DOT) to designate "National Capacity Projects," which would receive dedicated resources and expedited procedures for environmental reviews, and priority consideration from other federal agencies. Many of these provisions were included in S. 633, the "Aviation Delay Prevention Act," sponsored by Senators Hutchison, McCain, and Rockefeller, which was reported out favorably by the Committee during the last Congress but not acted upon by the full Senate.

- The bill creates a new Aviation Security Capital fund for airport security costs that uses $500 million annually in security service fees that are already being collected by the Transportation Security Administration (TSA). The fund would be administered by the TSA to make grants to airports to assist with capital security costs. Due to concern that the diversion of AIP grants to security projects threatens to undermine important airport capacity and safety projects, the bill tightens AIP eligibility rules to prohibit the use of AIP for such purposes.

## BACKGROUND

S. 824 was introduced by Commerce Chairman McCain on April 8, 2003 to reauthorize the FAA and its programs for three years, streamline airport capacity projects, and improve aviation security and its financing. The bill incorporates provisions contained in S. 633, the "Aviation Delay Prevention Act," and S. 2951, the "Federal Aviation Administration Research, Engineering, and Development Act," both of which were reported favorably out of the Commerce Committee last year. S. 2951 was passed by the Senate but was not acted on by the House of Representatives. The Senate did not take up S. 633.

The House passed its FAA reauthorization bill, H.R. 2115, on June 11 by a vote of 408-8.

Titles I and II of S. 824 reauthorize the major programs within the FAA, which are divided into operations; facilities and equipment; research, engineering and development; and the Airport Improvement Program (AIP).

Title III addresses Committee concerns with the need to ensure that the airline industry remains competitive and that small communities receive air service. Title IV addresses airport security costs and concerns in the context of the post-9/11 security mandates enacted into law by the Aviation and Transportation Security Act (ATSA, P.L. 107-071).

Title V extends War Risk insurance, clarifies Judicial Review procedures, increases civil penalties, and creates new environmental programs to reduce the emissions of airport-owned equipment and infrastructure. Title VI provides funds to study ways to improve commercial air service, including significant funding to develop a next-generation air traffic management system.

## BILL PROVISIONS

| Summary (in billions) | 2004 | 2005 | 2006 | Total |
|---|---|---|---|---|
| FAA Operations | 7.6 | 7.7 | 7.9 | 23.2 |
| Facilities and Equipment | 2.9 | 3.0 | 3.0 | 8.9 |
| Airport Improv. Program | 3.4 | 3.5 | 3.6 | 10.5 |
| Research/Engineering/Dev. | 0.3 | 0.3 | 0.3 | 0.9 |
| Total | 14.2 | 14.5 | 14.8 | 43.5 |

- The bill provides research, engineering, and development funding that is essentially identical to S. 2951, the "Federal Aviation Administration Research, Engineering, and Development Act," which was sponsored by Senators Rockefeller, Hutchison, McCain, and Hollings and passed the Senate during the 107th Congress (but was not acted on by the House).

## *National Capacity Projects*

- This section of the bill requires the Secretary to identify any large hub airports with delays that markedly affect the national air transportation system. Any airport that is identified and is not currently participating in the runway expansion process or has not begun a capacity enhancement study (CES) must perform a CES or establish a delay reduction task force to report to the Secretary

- Any airport that is the subject of a report or study recommending construction in response to delays must have the planning and environmental review process to address this matter completed within five years. Any airport that does not take recommended expansion action will be ineligible for federal planning and expansion funds or approval of passenger facility fees during that five-year period for any projects that are not related to environment, safety, or security.

- This section requires DOT to develop and implement an expedited, coordinated environmental review process that encompasses all Federal, state, regional, and local agencies' reviews for airport projects. This process would provide for concurrent reviews and conclude by a date certain. The Secretary also will be required to start a pilot program to be funded by airport sponsors to improve environmental review of national capacity projects. The pilot program will provide for the hiring of full-time staff from outside the U.S. Government with an expertise in environmental policy.

- As mentioned above, the bill contains a special rule for airports in Illinois that allows the Governor of the state to approve or disapprove airport projects in the state, but ensures that the provisions of the Act may be applied to projects in Illinois, and that airports in the state would be eligible to utilize the expedited process.

## *Aviation Security*

- The new Aviation Security Capital Fund will allocate 40 percent to hub airports, 20 percent to medium hub airports, 15 percent to small hub airports, and 25 percent distributed at the Secretary's discretion to address security risks. Airport apportionment is based on a formula based on the ratio of passenger enplanements at each airport compared to total passenger enplanements.

- In 2002, the DOT distributed $561 million from the AIP (17 percent of the available $3.3

billion) for security expenses, thereby reducing the funds available for safety and capacity projects. The bill modifies the definition of "Airport Development" to remove the eligibility for airport capital costs associated with installing detection system equipment. Such costs would heretofore be financed through the new Aviation Security Capital Fund.

### *Airline Service Development*

- The bill extends the Essential Air Service (EAS) program, which subsidizes air carriers to serve unprofitable routes and communities, at the current funding level of $113 million for three years. The bill also creates a "Marketing Incentive Program," aimed at increasing ridership and reducing costs. Communities that succeed in increasing air travel will receive a reduction in their local matching funds.

- The bill also creates numerous pilot programs for improving service at EAS communities: a Community Flexibility program for 10 communities; an Equipment Changes program for up to 10 communities; an Alternative Services program for any three airport sponsors to provide travel (including ground travel) to the closest hub airport; a Cost-Sharing program; and a Local Participation program.

### *Other Provisions of Note*

- The bill would extend the Secretary of Transportation's authority to issue war-risk insurance through calendar year 2006 for commercial air carriers. A separate provision extends war-risk insurance to certain aircraft manufacturers.

- The bill would amend the judicial review provision in chapter 461 of title 49 to clarify that decisions to take actions authorizing airport development projects are reviewable in the circuit courts of appeals. This clarification is necessary because of a recent court decision that, in FAA's view, wrongly interpreted current law.

- The bill, as amended in committee, would require the FAA to issue certificates to cabin crewmembers at the completion of their training.

- The bill would expand the definition of "airport development" to permit airports in air quality non-attainment and maintenance areas to use Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) funding to acquire or convert vehicles or ground support equipment to low-emission technology. The bill also would establish an emission credit program for voluntary emission reductions, developed with the Environmental Protection Agency, to facilitate airport expansion projects.

- The bill would also allow PFC revenue to pay for the incremental cost of the acquisition or conversion of ground support equipment and other infrastructure to low-emission technology.

The incremental cost would be defined as the difference between the cost of conventional equipment compared to that of the low-emission alternative.

## ADMINISTRATION POSITION

There was no Statement of Administration Policy (SAP) at press time. A SAP was issued in response to H.R. 2115 that supported passage of the bill as reported, but opposed a number of measures contained in the final bill. The Administration has threatened to veto any final bill that contains language prohibiting the privatization of air traffic controllers. (The Senate bill does not address the question of privatization; see also Lautenberg amendment below).

## COST

Over the 2004-2008 period, CBO estimates that implementing S. 824 would cost about $34.3 billion, assuming appropriation action consistent with the bill. In addition, CBO and JCT estimate that enacting the bill would increase direct spending by $863 million and reduce revenues by $3 million over the 2004-2008 period. The estimated budgetary impact of S. 824 is shown in Table 1. The costs of this legislation fall within budget function 400 (transportation).

## POSSIBLE AMENDMENTS

Lautenberg. Effectively
requires that Air Traffic Control remain a Government function under the control of the FAA. The amendment may mirror the language contained in S. 338.

Inhofe. Changes current FAA regulations to raise the mandatory retirement age from 60 to 65.

Cochran. Strikes Aviation Security Capital Fund provision of Title IV Sec. 402.

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